

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On November 10, 2003 the employee, then a 57-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that factors of her federal employment including casing and delivering mail caused a left shoulder rotator cuff tear and impingement. She noted on her claim form that her retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for left shoulder impingement, left shoulder osteomyelitis, and left upper arm and forearm cellulitis. The employee stopped work on March 22, 2004. OWCP paid her wage-loss compensation on the periodic rolls as of May 16, 2004.

On August 11, 2016 OWCP provided SSA with a FERS/SSA dual benefits calculation form.

On September 29, 2016 SSA completed the dual benefits calculation form, which indicated the employee's SSA benefit rates with a FERS offset and without a FERS offset from September 2012 through December 2015. Beginning September 2012, the SSA rate with FERS was \$899.20 and without FERS was \$134.50. Beginning December 2012, the SSA rate with FERS was \$914.40 and without FERS was \$136.70. Beginning December 2013, the SSA rate with FERS was \$928.10 and without FERS was \$138.70. Beginning December 2014 and December 2015, the SSA rate with FERS was \$943.80 and without FERS was \$141.00.

An October 13, 2016 FERS offset calculation worksheet noted each alleged period of overpayment and provided calculations, which resulted in a total overpayment to the employee of \$38,952.40 during the period September 14, 2012 through October 15, 2016. This worksheet reflected that from September 14 to November 30, 2012 the amount of the overpayment was \$1,966.37; from December 1, 2012 to November 30, 2013 the overpayment was \$9,358.04; from December 1, 2013 to November 30, 2014 the overpayment was \$9,498.82; from December 1, 2014 to November 30, 2015 the overpayment was \$9,660.07; and from December 1, 2015 until October 15, 2016 the amount of the overpayment was \$8,469.10.

In a preliminary determination dated October 18, 2016, OWCP informed the employee that she had received an overpayment of compensation in the amount of \$38,952.40 because the SSA/FERS offset was not applied to payments for the period September 14, 2012 through October 15, 2016. It determined that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. OWCP requested that the employee submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised the employee that it would deny waiver if she failed to furnish the requested financial information within 30 days. It further provided her with an overpayment action request form and notified her that within 30 days of the date of the letter she

² Docket No. 10-2372 (issued September 30, 2011).

could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On November 8, 2016 the employee contested OWCP's finding that she was at fault in the creation of the overpayment and requested waiver of recovery of the overpayment.

By decision dated December 16, 2016, OWCP finalized the October 18, 2016 preliminary determination, finding that the employee had received an overpayment of compensation in the amount of \$38,952.40 because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP withheld \$100.00 from the employee's continuing compensation payments beginning January 8, 2017.

In a memorandum of telephone call (Form CA-110) with an OWCP representative dated October 10, 2019, appellant informed OWCP that the employee, his wife, had passed away that morning.

By notice dated October 18, 2019, addressed to the employee's estate, OWCP issued a preliminary overpayment determination regarding the overpayment in the amount of \$38,952.40 for the period September 14, 2012 through October 15, 2016 that was finalized by decision dated December 16, 2016. It noted that it had requested that the Office of Personnel Management (OPM) make appropriate deductions from any monies owed to appellant under the Civil Service Retirement Act and that deductions would continue until the entire debt was recovered. OWCP reminded him that interest at the rate of one percent annually retroactive to the date of the initial demand letter, and any administrative costs incurred, may be applied to the debt, as well as penalties at one percent per year for any portion of the debt that remained more than 90 days delinquent. It advised that, if appellant wished to discharge the debt in one lump sum to avoid the assessment of interest, he should send a check or money order to OWCP and include the employee's FECA claim number on the check. OWCP enclosed a record of appellant's debt history and payments from October 13, 2016 through October 14, 2019.

On October 18, 2019 OWCP contacted OPM to determine whether any OPM benefits were payable to the employee's estate. No response was received.

By letter to OWCP dated October 24, 2019, appellant noted that the employee, his wife, had been found without fault and contested the fact of overpayment. He further stated that the monthly recovery payment of \$100.00 was not justified and the offsets to her compensation payments since October 15, 2016 should be repaid to her estate. Appellant stated that the overpayment determination, and offset to the employee's continuing compensation were not in equity and good conscience.

By letter to OWCP dated January 10, 2020, the employing establishment inquired regarding recovery of delinquent debt payments, noting that the estate of the employee had not made a payment toward the debt since October 12, 2019.

By decision dated June 19, 2020, addressed to the employee's estate, OWCP finalized the overpayment in the amount of \$36,479.87 for the period September 14, 2012 through October 15, 2016. It determined that, while the estate was without fault in the creation of the overpayment, the circumstances of the case did not warrant waiver of recovery of the overpayment. OWCP directed that the \$36,479.87 overpayment be paid in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁵ FECA Bulletin No. 97-09 provides that FECA compensation have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

OWCP's procedures for recovery from a deceased debtor's estate provide that, if the claimant recently passed away, it should take prompt action because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery.⁷

Thus, it should refer the debt to the financial management system (FMS) for offset of the deceased claimant's last federal tax refund under the Treasury's Offset Program (TOP).⁸ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,⁹ including

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see R.D.*, Docket No. 19-1598 (issued April 17, 2020); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2018).

⁸ 31 C.F.R. § 285.2; *id.* at Chapter 6.500.15(g)(1)-(7) (September 2018). *See also R.B. (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *W.J. (E.J.)*, Docket No. 18-1035 (issued July 9, 2019).

⁹ *Supra* note 7 at Chapter 6.500.12 (September 2018).

sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

By notice dated October 18, 2019, addressed to the employee's estate, OWCP issued a preliminary overpayment determination that the employee had received an overpayment of compensation in the amount of \$38,952.40 for the period September 14, 2012 through October 15, 2016 that had previously been finalized by decision dated December 16, 2016. It noted that it had requested that OPM make appropriate deductions from any monies owed to appellant under the Civil Service Retirement Act and that deductions would continue until the entire debt was recovered. On October 18, 2019 OWCP contacted OPM to determine whether any OPM benefits were payable to the employee's estate. Although no response was received, by decision dated June 19, 2020, addressed to the employee's estate, OWCP finalized an overpayment of compensation in the amount of \$36,479.87 for the period September 14, 2012 through October 15, 2016. It determined that the estate was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment and directed that the \$36,479.87 overpayment be paid in full.

OWCP's procedures provide for recovery from a deceased debtor's estate.¹¹ The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the FMS for offset of the deceased claimant's last federal tax refund under the TOP.¹² OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,¹³ including sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁴

Although OWCP attempted to contact OPM, the evidence of record does not substantiate that actions OWCP has taken to recover the overpayment debt include referral to FMS for appropriate offset under the TOP prior to taking overpayment actions against the employee's estate. The Board, therefore, cannot make an informed decision regarding the fact of overpayment and the amount to be collected against the estate.¹⁵ The case shall therefore be remanded for

¹⁰ *Supra* note 7 at Chapter 6.500.15(e).

¹¹ *Supra* note 7.

¹² *Supra* note 8.

¹³ *Supra* note 9.

¹⁴ *Supra* note 10.

¹⁵ *See R.B. (J.B.) and W.J. (E.J.), supra* note 8.

OWCP to follow all procedures as outlined in Chapter 6.500.15.¹⁶ Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁷

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 20, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ See *supra* note 7; *D.U.*, Docket No. 20-0594 (issued June 4, 2021).

¹⁷ In light of the Board's disposition of Issue 1, Issues 2 is rendered moot.